

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER BOCELLI	:	CIVIL ACTION
	:	
v.	:	
	:	
SUPERINTENDENT OF GRATERFORD	:	
SCI, DONALD VAUGHN, et al.	:	NO. 97-2204

MEMORANDUM ORDER

This is a habeas corpus action pursuant to 28 U.S.C. § 2254. Petitioner has filed a Motion to Alter or Amend the Judgment, for Relief from Judgment or for Reconsideration of the court's July 21, 1998 order dismissing this action.

Petitioner asks the court to revisit the issue of whether the jury instructions at his criminal trial violated his right to due process by permitting the jury to convict him of first-degree murder as an accomplice without finding that he had the specific intent to kill. Specific intent to kill is an essential element of first degree murder under Pennsylvania law. See 18 Pa. Cons. Stat. Ann. § 2502 (West 1983); Commonwealth v. Huffman, 638 A.2d 961, 962 (Pa. 1994); Commonwealth v. Bachert, 435 A.2d 931, 935 (1982). Federal due process requires that the Commonwealth prove beyond a reasonable doubt every fact necessary to constitute the offense of which petitioner was convicted. Smith v. Horn, 120 F.3d 400, 415 (3d Cir. 1997).

Petitioner argues that Smith v. Horn, decided after the court approved and adopted Magistrate Judge Welsh's Report and

Recommendation and dismissed petitioner's action, has a "direct impact" on this case because it "is really no different."

In Smith, defendant Smith was tried with a co-defendant for robbing a pharmacy at gunpoint, and shooting and killing a robbery victim in the process. Smith, 120 F.3d 404. A crucial issue in that case was which defendant actually committed the killing and whether the other shared his intent to kill. Id. at 404-06. Smith was convicted of first-degree murder and conspiracy to commit murder but was convicted of conspiracy to commit first-degree murder. Id. at 406. The Court found that the jury instructions at Smith's trial allowed the jury to convict him of first-degree murder by finding that his accomplice shot and intended to kill the victim without finding that Smith shared his co-defendant's intent to kill. Id. at 411. Because the Court found a reasonable likelihood that the jury understood the charge as imposing upon the Commonwealth no burden of proving that Smith intended for the victim to die, it held that the instructions were constitutionally infirm. Id. at 414.

The jury instructions at petitioner's criminal trial suffered from no similar defect. The trial court properly charged the jury on accomplice liability. The trial court then told the jury that to find petitioner guilty of first-degree murder as an accomplice they would have to find that he had the requisite intent to kill. The trial court charged the jury that

it must decide "whether the defendant had the specific intent to kill" and in doing so should "consider all the evidence regarding his words and conduct and the attending circumstances that may show his state of mind." The trial court instructed the jurors that "to find the defendant guilty of first degree murder as an accomplice, you must find that he shared in the intent to kill and was otherwise an accomplice of the person who did the actual killing."

Simply stated, the trial court's instructions did not permit the jury to convict petitioner of first-degree murder as an accomplice without first finding that he intended that the victim be killed. Smith is clearly distinguishable.

ACCORDINGLY, this day of February, 1998, upon consideration of petitioner's Motion to Alter or Amend the Judgment, for Relief from Judgment or for Reconsideration (Doc. #9), and defendants' response thereto, **IT IS HEREBY ORDERED THAT** said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.